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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,238	10/23/2003	Huamin Chen	YOR920030422US1	1434
7590 Ryan, Mason & Lewis, LLP 90 Forest Avenue Locust Valley, NY 11560				
EXAMINER				
SALL, EL HADJI MALICK				
ART UNIT		PAPER NUMBER		
2457				
MAIL DATE		DELIVERY MODE		
10/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/693,238

**Applicant(s)**

CHEN ET AL.

**Examiner**

EL HADJI M. SALL

**Art Unit**

2457

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1-37.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Salad Abdullahi/  
Primary Examiner, Art Unit 2457

Continuation of 11, does NOT place the application in condition for allowance because:

(A) Applicants argue that Nowhere does this paragraph nor any other paragraph of Shenoi teach or suggest assigning individual clients to one of a plurality of quality-of-service classes. Shenoi only states that "it is common to assign different service classes to different PVCs." As is defined in paragraph [0087] of Shenoi, PVCs are "Permanent Virtual Circuits." Thus, PVCs are not clients. Therefore, there is no teaching or suggestion of assigning individual clients to one of a plurality of quality-of-service classes, as claimed. In regards to the point (A), Examiner respectfully disagrees.

Paragraph [0089], Shenoi discloses QoS differentiation and assigning different service classes to different PVCs (i.e. teaching or suggesting "assigning individual clients to one of a plurality of quality-of-service classes").

(B) Applicants argue that nowhere does this paragraph nor any other paragraph of Shenoi teach or suggest satisfying requests so that a client belonging to a high quality-of-service class is given preferential access to data versions which require higher overheads to serve. Shenoi only states that "packets are assigned priority levels." In regards to the point (B), Examiner respectfully disagrees.

Paragraph [0117], Shenoi discloses differentiated services are provided using IP protocol suites such as DiffServ. That is, packets are assigned priority levels and "high priority" packets are given preferential treatment (i.e. "teach or suggest satisfying requests so that a client belonging to a high quality-of-service class is given preferential access").

(C) Applicants argue that Borella makes no determination regarding overheads to serve a version of the given data but rather simply concerns itself with the transfer time (e.g., using "ping" packets) between the server and the user computer. Determining transfer time does not constitute determining overhead to serve a version. In regards to the point (C), Examiner respectfully disagrees.

Column 6, lines 21-34, Borella discloses an amount of original content to send to the user computer is dynamically determined by the web server using the network latency determined at Step 24. In one embodiment of the present invention, web server (i.e., the second network device 16) determines an amount of original electronic content to send to the user computer (i.e., the first network device 12) using pre-determined cutoff latencies. The pre-determined cutoff latencies allow different amounts (e.g., different versions) of the original electronic content to be send to user computer. The pre-determined cutoff latencies are determined based on characteristics of type of computer network 18 being used (e.g., the Internet, an intranet, or another computer network).

(D) Applicants argue that with regard to the {103(a) rejection of claims 1-35 and 37, Applicants assert that the cited combination fails to teach or suggest each and every limitation of claims 1-35 and 37 as alleged. In regards to the point (D), Examiner respectfully disagrees.

In response to applicant's argument that the cited combination fails to teach or suggest each and every limitation of claims 1-35 and 37 as alleged, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one would be motivated to do so to allow adjusting the amount of electronic content presented to user based on determined network latency by using ordered delivery of electronic content (abstract).